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## Putting a Price on Fame

By [Jason Probst](#) Jul 10, 2008

In a fast-growing sport where fighters can generate ever-larger sums through endorsements, licensing and usage of their image, a struggle is underway over control and ownership of those rights in mixed martial arts' biggest organization. The battle between Zuffa LLC, parent company of the Ultimate Fighting Championship, and UFC fighters to control these intellectual properties has become a topic of contentious debate.

When a name fighter can get a five-figure payday for a shoe or t-shirt contract, or \$10,000 merely for mentioning his post-fight afterparty while being interviewed by Joe Rogan during a broadcast -- that's testimony to the market penetration of the UFC, and the brand leverage its fighters are making unprecedented sums from.

A UFC merchandise rights agreement circulated to fighters in recent months has sparked concerns among managers, attorneys and agents who represent the athletes, causing an industry-wide standoff between this group and the UFC.

As reported in a June 24 article at SI.Com, the agreement would allow fighters signing it to generate a percentage-based income as these products were sold. Last month, the UFC announced a four-year licensing agreement with Jakks Pacific to sell toy action figures in major retail outlets, the first of numerous deals that is said to include a JCPenney clothing line and other paraphernalia from lighters to wristwatches to pool tables. As the UFC continues to grow, the proposed merchandising agreement could allow fighters to make money should their image be used in a variety of these products, limited only by the burgeoning brand value of what the UFC could potentially tap into.

But concerns with the agreement, according to independent legal experts and industry figures alike who reviewed one version of the contract obtained by Sherdog.com, are considerable. Perhaps the biggest impasse involves the term of the UFC merchandise agreement, initially extending for a three-year period, but automatically renewing for additional three-year terms perpetually until Zuffa alone decides to terminate the agreement. The terms of this part of the agreement are long reaching to say the least.

For instance, if a fighter satisfies his promotional (fights required) contract with the UFC and decides to fight for another promotion, the UFC would still retain his merchandising and licensing rights. Essentially, the future earning rights of that fighter with other organizations is blocked by the renewal clause. Want to buy a t-shirt of your favorite fighter now that he's competing for another promotion? Not if he's signed on the UFC's dotted line. And how likely will Zuffa be to continue promoting a fighter through product placement if he is no longer in their stable?

"The fighters should be wary of granting these rights in perpetuity," said Peter Bonfante, a licensing attorney based in Beverly Hills who has represented several athletes, including major league baseball players. "At the very least, fighters should seek a term that continues only as long as they are promoted by the UFC."

But for those that choose to make the UFC their one-and-only home, what do they stand to rake in?

The agreement allows fighters to collect 10 percent of gross revenues received on products sold indirectly or directly by Zuffa (such as posters on the UFC Web site), and 20 percent would be paid to fighters if products are sold through third parties (such as the JAKKS action figure deal.) For product lines featuring the identities of multiple fighters, such as a trading card set, the percentages set forth above are divided by the number of figures appearing in the set. For fighters, this results in receiving a fraction of the licensing fees they could obtain individually, but is potentially offset by greater sales due to the UFC brand.

In addition, the agreement fails to provide for revenue auditing rights, which would permit fighters to see how much money the UFC was required to pay them from sales pursuant to the agreement.

Attorney Peter Carfagna, who teaches sports law at Harvard School of Law in addition to serving as general counsel at IMG, a prominent sports management company, suggests the agreement might be desirable for some, but counter-productive for others.

"I'd counsel strongly against signing this agreement for any of the top guys," said Carfagna. "Because of the lack of an opt-out right. With the potential for perpetual rights, you don't want to sell those away. There may be some who'd be happy to take it, because it's 10 or 20 percent of gross royalties. That's better than zero percent of zero percent. It's all about leverage. Also it's in the eye of the beholder. It's not good if you're one of the top guys who can cut their own deals. And why sign for no audit rights? That's the real killer for me."

Another attorney who represents several fighters in multiple organizations said that the emerging market for endorsements means that many athletes can pick and choose deals on a free-market basis, taking a piecemeal approach to potentially lucrative markets like t-shirt, shoe and gear endorsements, in addition to coaching seminars and, potentially, landing television and movie roles.

"If the UFC's gonna sell licensed golf balls or Bic lighters, that would be fine," he said. "But, say, a t-shirt deal, that's what we do all the time. They're taking it away from the managers. And we do that better than the UFC. There's no guaranteed bonus or royalty. Say a guy gets paid \$40,000 for a two-year t-shirt deal, which is what some guys can get if they're a name fighter, a legitimate contender or fan favorite. A t-shirt company will come to a fighter and say we'll give you 15 percent of gross proceeds. For \$10 per shirt, our fighter gets \$1.50. What UFC is saying is, we'll give you 20 percent of whatever we bring in (through the stated terms of the third-party agreement). What the UFC is doing would be make this t-shirt, and say they negotiate a really good deal with the t-shirt company and get 20 percent. They get \$2. Of that 2 bucks they will give our guy twenty cents. The economics on that deal don't make sense unless the UFC can sell a lot more shirts."

Recent defections of top talent from the UFC, including former champions [Randy Couture \(Pictures\)](#) and [Tito Ortiz \(Pictures\)](#), were contentious affairs with varied reasons behind the splits, both defined by acrimony on both sides of the negotiating table. But in both cases, those fighters balked at signing over marketing rights in previous deals offered them and have battled the UFC in the past over rights to their likeness, particularly as they penetrated the public consciousness and greatly increased their potential brand value.

But the Couture and Ortiz falling outs could be a thing of the past if the new deal is in place, said one attorney who has told his fighters not to sign the offer.

That is something, apparently, the UFC is working to nip in the bud with new talent, according to one attorney, who claims Zuffa circulated the agreement to fighters before a recent UFC.

"Some of these fighters don't have good representation with them, if any, and the UFC just buried it in their pre-fight paperwork," said the attorney, who asked to remain anonymous. "This next Spike TV show on July 19, they're going to try it then, too."

And while Sherdog.com has learned that various top-tier fighters have begun to negotiate tailor-made licensing deals with Zuffa, other sources have indicated that participants on the UFC-owned Spike TV reality show "The Ultimate Fighter" were told to sign the merchandising agreement as a condition to appear on the latest version of the series.

Calls to the UFC's legal counsel and its public relations department were not returned for this story, while many involved with negotiations surrounding the agreement would only speak to Sherdog.com under anonymity for fear of repercussions involving their client's current and future fight contracts.

A manager for several UFC fighters said that he was "blown away" by the language in the contract. Ranging from the perceived language of Zuffa getting merchandising rights in perpetuity, to lack of revenue auditing rights to ensure royalties are fully paid, he was also concerned about potential gray areas of the agreement. Particularly, if a fighter leaves the UFC, the agreement could severely limit his ability to make money through the numerous endorsement opportunities that have become a dependable revenue stream in addition to fight purses.

"Say a guy becomes an actor. Imagine if he decided to not fight anymore," said the manager. "Now the UFC owns the rights to him and his autobiography. The UFC keeps sending out emails, warm fuzzies, saying 'Wow, so-and-so just signed this big deal with us. If you don't get on this boat, you'll miss it.' (UFC President) Dana White is the master of this."

However, New York-based attorney Judd Burstein, a hardened boxing litigator who has been involved in some of that sport's biggest cases, disagreed that the UFC deal being circulated to fighters is unfair. Burstein, who has successfully sued promoter Don King on multiple occasions, said that the deal is merely a product of a free-market system, and the UFC's similarity to other brand-powerful sports leagues gives the organization the right to leverage that as the NHL, NFL and NBA do.

"You have to look at the UFC as a unified business," said Burstein, who has represented Oscar De La Hoya and Lennox Lewis, among others. "All of the fighters are employees of the UFC. It's not unusual in the intellectual property area that, an employer gives you a career, and without them, you wouldn't be able to sell shoes. You're (also) dealing with something extraordinarily successful over a short time. As there is (promotional) competition, superstars could develop their own deals. I don't think it's too far over the edge. This is not boxing promotion."

To wit, the forces of the free market will work themselves out, he added.

"If there's a significantly enough fighters demanding more, the UFC will cough up the money," Burstein said. "If they organized, they could shut the thing down with a strike. It's America. If they give you a draconian contract, sign it if it's the only deal."

*When the original version of this article was published, Sherdog did not recognize Robert Maysey's contributions. Sherdog hereby acknowledges that Mr. Maysey, the founder of the Mixed Martial Arts Fighters Association, contributed to this article. For more information regarding the Mixed Martial Arts Fighters Association, visit <http://mmafa.tv/blog/>*

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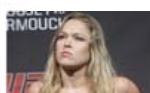
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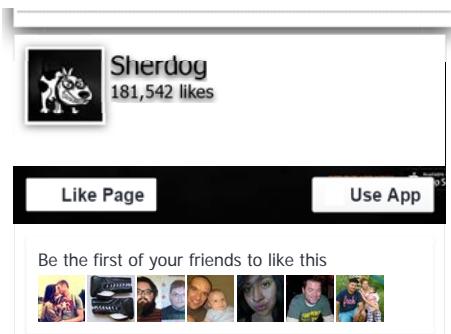
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